SUBJECT: Establishing a brackish groundwater operating permit process

COMMITTEE: Natural Resources — favorable, without amendment

VOTE: 7 ayes — Larson, Phelan, Ashby, Burns, Frank, Kacal, T. King

0 nays

4 absent — Lucio, Nevárez, Price, Workman

WITNESSES: For — Hope Wells, San Antonio Water System; Brian Sledge, various retail public utilities and groundwater conservation districts; (*Registered, but did not testify*: Dirk Aaron, Clearwater Underground Water Conservation District, Texas Alliance of Groundwater Districts; Ty Embrey, Middle Trinity Groundwater Conservation District; Randy Lee, San Antonio Water System; Jason Skaggs, Texas and Southwestern Cattle Raisers Association; Martha Landwehr, Texas Chemical Council; Kyle Frazier, Texas Desalination Association; Jim Reaves, Texas Farm Bureau; Lindsey Miller, Texas Independent Producers and Royalty Owners Association; Dean Robbins and Stacey Steinbach, Texas Water Conservation Association; Thomas Parkinson)

Against — (*Registered, but did not testify*: Adam Cahn, Cahnman's Musings; Elizabeth Montgomery)

On — (*Registered, but did not testify*: Robert Mace, Texas Water Development Board)

BACKGROUND: Water Code, sec. 16.060 requires the Texas Water Development Board (TWDB) to prepare a biennial progress report on the implementation of seawater or brackish groundwater desalination activities. The report includes the identification and designation of local or regional brackish groundwater production zones in areas with moderate to high availability and productivity of brackish groundwater that can be used to reduce the use of fresh groundwater.

TWDB is required to determine the amount of brackish groundwater that the zone is capable of producing over a 30- and a 50-year period without causing a significant impact to water availability or quality. The board also must make recommendations for reasonable monitoring to observe the effects of water production in the zone.

DIGEST:

HB 27 would establish a process for groundwater conservation districts (GCDs) to issue well operating permits for the production of brackish groundwater.

District rules. The bill would allow a district located over any part of a designated brackish groundwater production zone to adopt rules to govern the issuance of permits to complete and operate a well to withdraw brackish groundwater. A GCD would be required to adopt rules within 180 days if it received a petition from a person with a legally defined interest in groundwater in the district. Rules would govern permit terms, applications, monitoring systems, and annual reports.

A district would have to provide that an application for a brackish groundwater production zone operating permit would be processed in the same way as an application for a fresh groundwater well operating permit. District rules relating to brackish groundwater operating permits would have to be consistent with and could not impair the property rights of a landowner to drill or produce the groundwater below the surface of his or her land.

Permit terms. A person could obtain a brackish groundwater production zone operating permit for a municipal project to provide a public source of drinking water and a project to generate electricity. A permit would allow a rate of withdrawal of brackish groundwater consistent with, but not exceeding, the amount of brackish groundwater the zone was capable of producing as identified by the Texas Water Development Board (TWDB). The permit would have a minimum term of 30 years.

Permit applications. A permit application would have to include the proposed well field design, the requested maximum groundwater

withdrawal rate, the number and location of monitoring wells needed, and a report on the projected effects of the proposed production on water levels and quality in the same or an adjacent aquifer in the designated production zone.

The district would submit the application to TWDB for technical review, resulting in a report on the compatibility of the proposed well field design with the production zone and recommendations for a monitoring system. The district could not hold a hearing on the application until it received this report.

Monitoring system. A GCD would be required to implement a system recommended by TWDB to monitor water levels and quality in the same or an adjacent aquifer in which the designated production zone was located. For projects located in the Gulf Coast Aquifer, a district also would have to determine if production was causing or would be likely to cause subsidence. The bill would designate the Catahoula and Burkeville confining systems and the Jasper, Evangeline, and Chicot aquifers as part of the Gulf Coast Aquifer.

Annual reports. A permit holder would be required to submit annual reports that included the amount of brackish groundwater withdrawn, the average monthly water quality, and the aquifer levels in both the designated production zone and in any monitored aquifer. Within 120 days of receiving the reports, TWDB would have to issue a report on whether the applicable brackish groundwater production was projected to cause significant aquifer level declines, negative effects on water quality, or subsidence. After receiving the report from TWDB and after a hearing, the district could amend the applicable permit to limit water production, approve a mitigation plan, or both.

Groundwater production availability. The production of brackish groundwater under a permit would be in addition to the amount of groundwater that could be produced according to district projections. A GCD would have to issue permits up to the point that the total volume of groundwater produced in a designated production zone equaled the

amount of brackish groundwater that could be produced annually to achieve groundwater availability, as determined by TWDB.

Effective date. The bill would take effect December 1, 2017 .

SUPPORTERS SAY:

HB 27 would establish a permitting process for alternative water supplies through the production of brackish groundwater, which is an important step toward ensuring science-based groundwater management for the state's future water supply. In 2015, the 84th Legislature enacted HB 30 by Larson, which directed the Texas Water Development Board (TWDB) to identify and designate brackish groundwater production zones. While TWDB can designate these zones, it does not have the ability to permit brackish groundwater production. This bill simply would continue efforts to diversify the state's water resources, including by relieving pressure on freshwater resources by developing drought-resistant brackish groundwater resources.

Districts could enforce any rules required by the provisions of the bill, including the required monitoring system. A GCD could create any enforcement tool it deemed necessary for a local violation of rules. Under the bill, a GCD could amend a permit or establish a mitigation plan if there was some unanticipated negative effect on water levels. The district would have the option to reference a mitigation plan in the permit itself to ensure implementation.

Concerns that the bill would leave districts open to litigation by groundwater developers are unfounded because the bill only references current law with regard to property rights and would not create a new standard. This provision would ensure that brackish groundwater permits had similar standards to fresh groundwater permits.

OPPONENTS SAY:

HB 27 would create a separate bureaucratic process for brackish groundwater permits. The TWDB already has significant authority in this area. The Legislature instead should propose a less bureaucratic way to provide greater access to brackish groundwater, as noted in the governor’s veto message on HB 2377 by Larson, a similar bill passed during the 85th

Legislature's regular session.

OTHER OPPONENTS SAY:

The brackish groundwater operating permit process proposed by HB 27 could be improved by properly enforcing monitoring requirements. The bill would not impose consequences if monitoring of a designated brackish groundwater production zone found subsequent permit violations or other negative impacts. Districts should be able to hold permit holders liable for damages by revoking or otherwise limiting a permit. The bill also does not fully explain how a district's plan to mitigate negative effects of groundwater production would gain approval or how the plan would be tracked to ensure enforcement.

The bill also should not include a specific provision prohibiting permits from infringing on property rights. These rights already are covered in statute, and this provision could leave districts open to litigation by groundwater developers.